IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. NO. 52/2006

DIN Cooperative Group Housing Society Ltd. ..... Petitioner

! through: Mr.V.B.Andley, Sr. Adv. with Mr. Rajinder Mathur, Adv.

VERSUS

$ Sh. A.S.Rana ..... Respondent

^ through: Mr. B.K.Dewan, Adv.

RESERVED ON : 02-01-2007

% **D**ATE OF DECISION: 19-02-2007

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. These are objections by the petitioner to the award dated 24.10.2005 published by Sh. V.D.Tiwari, the learned sole arbitrator appointed by this court to decide the disputes and differences between the petitioner and the respondent.

2. Petitioner is a cooperative group housing society. Respondent is a building contractor and carries on a business under the name and style 'Rana Construction Company'.

3. The impugned award has awarded Rs.75,19,230/- to the contractor.

4. Admitted case of the parties is that the society had invited offers from contractors to construct 166 residential flats on the land allotted to the society. Offer of the respondent was accepted and a formal agreement was executed between the parties on 25.2.1996.

5. The stipulations in the tender documents as also certain post offer letters exchanged between the parties were included as a part of the contractor terms.

6. Clause 9 of the agreement dated 25.2.1996 incorporated, by reference, letters exchanged between the parties as forming part of their contract.

7. Work had to commence on 1.3.1996. It had to be completed within 24 months.

8. Parties ran into commercial disputes. For a long period of time work remained suspended. There was negotiation between the contractor and the office bearers of the society. The contractor was allowed to continue with the

work. Somewhere in the year 2002 work was completed. However, I may note at the very beginning that the society disputed the work done by the contractor. It also disputed that the work was not completed.

9. At the hearing held on 2.1.2007, Sh. V.B.Andley, learned senior counsel for the petitioner attempted to urge the matter as if I was sitting in appeal. Learned counsel made lengthy submissions calling upon the court to go through each and every piece of evidence.

10. I had called upon the learned counsel to restrict submissions within the scope of a challenge permissible under Section 34 of the Arbitration and Conciliation Act 1996.

11. But, due to insistence by the counsel that it was a case of an award based on no evidence, I had heard submissions as if an original proceeding was being decided by me.

12. I had called upon the parties to file written submissions. The same have been filed.

13. Unfortunately, both parties have given to me their respective versions, without dealing with the submissions of the rival parties.

14. Therefore written submissions do not guide me any

better.

15. I do not intend to refer to the verbose submissions made by learned counsel for the society and as reproduced in the written submissions running into 30 pages. My reason thereof is that a preliminary, and in my opinion, a most fundamental point remains unanswered.

16. Needless to state, the same remains unanswered by the society.

17. As noted above, award in favour of the contractor is in sum of Rs.75,19,230/-.

18. If submissions made by the society were to be accepted and all payments alleged by the society stand proved, it would be a case where the society would have paid an excess sum of Rs.75 lacs to the contractor.

19. I had questioned Mr. V.B.Andley, learned senior counsel whether it was plausible for the society to have paid an excess sum of Rs.75 lacs. If yes, I questioned learned counsel as to how this had happened.

20. After all, the society had engaged the services of an architect who was scrutinizing the bills.

21. No answer, much less a satisfactory answer was given by the learned counsel.

22. It was urged by learned counsel for the petitioner and in respect whereof written submissions have been pend down at page no.26 and page no.29 of the written submissions that a sum of Rs.50 lacs paid in cash to the contractor was not accounted for by the learned arbitrator and that a sum of Rs.30 lacs paid by cheque which was paid has been wrongly treated as not paid by the arbitrator.

23. Needless to state, if the society proved said payment of Rs.50 lacs and also established that Rs.30 lacs paid by the society was not accounted for by the contractor effect would have been that the contractor would have been over paid a sum of Rs.5 lacs. The learned arbitrator has held that the society has to pay Rs.75,19,230/- to the contractor. It is thus obvious that the arguments predicated on the running bills and the attempt to show that the value of work done was to be decreased by Rs.80 lacs over and above the value of work done found completed by the arbitrator would be a highly exaggerated argument for the reason in said circumstance, if stand of the society qua the payments was to be accepted, over payment by Rs.80 lacs would have been made to the contractor.

24. In respect of the sum of Rs.50 lacs stated to have been paid in cash to the contractor, suffice would it be to note that no receipt in respect thereof has been produced by the

society. Extracted from the written submissions of the society, the stand is as under:-

> "The former secretary of the society Sh. Madan Sharma informed the society vide his letter dated 7.11.2004 that a sum of Rs.50 lacs was paid in cash to the contractor on his request. The former secretary being friend of the contractor obliged him by paying a cash amount of Rs.50 lacs. The arbitrator was requested to direct the contractor to file the statement of his account in Punjab National Bank, which was declined by the arbitrator. This amount of Rs.50 lacs is outstanding against the former secretary and managing committee under the head "Cash in hand" in society's account."

25. If Rs.50 lacs is outstanding against the former managing committee under the head "Cash in hand", the society has to get the sum accounted from the previous managing committee.

26. If the previous managing committee has defalcated the accounts and has withdrawn huge amount of cash, it does not mean that the contractor has been paid the same.

27. What is relevant is that there is no receipt executed by the contractor evidencing receipt of Rs.50 lacs in cash.

28. As regards Rs.30 lacs, suffice would it be to note that along with his letter dated 20.1.2002, contractor enclosed therewith a statement showing details of the payment received by the contractor till issuance of the letter dated 20.1.2002.

29. in the said letter contractor admitted having received Rs.30 lacs in the financial year 1.4.1999 to 31.3.2000 and Rs.35 lacs in the financial year 1.4.2000 to 31.3.2001.

30. In the statement of accounts which was annexed by the contractor with the letter dated 20.1.2002, details of the payment received were disclosed as under:-

"RANA CONSTRUCTION CO.

Ledger A/c Din Co-op. Grp. Hsg. Society Ltd. 1999-2000

Date	Particular	Amount Received
21.4.1999	Cheque No. 049975	10,00,000.00
8.5.1999	Cheque No. 053021	10,00,000.00
19.6.1999	Cheque No. 053032	5,00,000.00
29.7.1999	Cheque No. 051926	5,00,000.00
		30,00,000.00

RANA CONSTRUCTION CO.

Ledger A/c Din Co-op. Grp. Hsg. Society Ltd. 2000-01

Date	Particular	Amount Received
15.4.2000	Cheque No. 386261	15,00,000.00
8.5.2000	Cheque No. 386264	20,00,000.00
		35,00,000.00

"

31. While asking for payment vide letter dated 20.1.2002, contractor had stated that Rs.79,51,886/- were still due and payable to him. Needless to state, while indicating the

gross work done and payments received, contractor had reflected in his statement of account, Rs.30 lacs received during the financial year 1.4.99 to 31.3.2000 and Rs.35 lacs during the financial year 1.4.2000 to 31.3.2001.

32. Before the learned arbitrator, it was pleaded by the society that Rs.30 lacs paid by the society were not accounted for by the contractor.

33. I am afraid, learned counsel for the petitioner as also the petitioner have either not understood the simple accounting mechanism or are refusing to accept the truth.

34. As noted above, details of the cheques by which contractor had received Rs.30 lacs in the financial year 1999-2000 and Rs.35 lacs in the financial year 2000-01 were indicated in the statement of account filed by the contractor along with his letter dated 20.1.2002.

35. In para 6.20 and 6.21 of the objections, it is inter alia urged as under:-

> "6.20 Because the learned arbitrator erred in law in losing sight of the fact that the respondent has admitted the receipt of Rs.30,00,000/- from the petitioner by cheque dated 21.4.1999, 8.5.1999, 19.6.1999 and 29.7.1999 which also find mention in the books of accounts kept by the respondent, copies of which have been filed before the learned arbitrator.

> 6.21 Because the learned arbitrator should have held that the sum of Rs.30 lacs was a payment only for the work done for which 18th pre final bill was given."

36. I am afraid, learned arbitrator has duly taken note of the aforesaid payment of Rs.30 lacs but what has been held is that after giving adjustment of said payment, balance outstanding work for which payment had to be made was Rs.75,19,230/-.

37. It is not a case where the learned arbitrator, while determining the payment due has excluded the sum of Rs.30 lacs.

38. In my opinion, the aforesaid facts i.e. society not proving having paid Rs.50 lacs in cash and the stand of the society that Rs.30 lacs paid by cheques were not accounted for, being contrary to the record, the inevitable conclusion is that the amount found due and payable by the learned arbitrator is correct.

39. I find no merits in the objections. I refrain from noting the submissions made in respect of the running bills for the reason work done under the running bills is a question of fact. Questions of fact have to be decided by the arbitrator. Findings pertaining to facts are immune for challenge save and

except if it can be shown that a material document was ignored or that the finding is perverse.

40. None has been shown.

41. The petition is accordingly dismissed.

42. No costs.

February 19, 2007 (PRADEEP NANDRAJOG)
mm JUDGE